U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

B5

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 28 2005

WAC 04 246 50308

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be rejected as untimely filed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the sciences, arts, or business. The petitioner seeks employment at [redacted], the publishing arm of the Church of Scientology International. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner does not work in the sciences, arts, or business, and therefore cannot qualify for classification as an alien of exceptional ability in the sciences, arts, or business. The director also found that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on March 30, 2005. The director properly gave notice to the petitioner that she had 33 days to file the appeal. The petitioner indicates that the decision was "dated March 30, 2005 [but] served on April 7, 2005." The petitioner provides no proof (such as a postmarked envelope) to indicate that the director's decision went out later than March 30, 2005. Service of a decision is complete upon mailing. *See* 8 C.F.R. § 103.5a(b). Therefore, absent persuasive evidence to the contrary, we consider the decision to have been served on March 30, 2005, and the appeal period to have tolled 33 days later (Monday, May 2, 2005). The petitioner dated the appeal form May 2, 2005, and an accompanying cover letter May 3, 2005. The shipping label for the package containing the appeal is dated May 4, 2005. The director received the appeal the next day, May 5, 2005, 36 days after the decision was issued. Accordingly, the appeal was untimely filed.

We note that, even if the appeal had been timely filed, it would have been summarily dismissed. 8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B Notice of Appeal, filed on May 5, 2005, the petitioner indicated that a brief would be forthcoming within thirty days. On May 31, 2005, the petitioner requested an additional 30-day extension. To date, over four months after the filing of the appeal, careful review of the record reveals no subsequent submission; all other documentation in the record predates the issuance of the notice of decision.

The statement on the appeal form reads simply "The decision is unsupported by statutes and regulations and is factually erroneous. There is nothing in the statutes or regulations which prevents this Petitioner from seeking this immigration benefit." This is a general statement that makes no specific allegation of error. The bare assertion that the statute does not support the denial is not a sufficient basis for a substantive appeal.

Inasmuch as counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the appeal would be subject to summary dismissal had it been timely filed.

As the appeal was untimely filed, the appeal must be rejected.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). In this instance, the appeal contains no substantive content (as explained above) and therefore there is no reason to conclude that the petitioner's untimely appeal meets the requirements of a motion to reopen or a motion to reconsider.

ORDER: The appeal is rejected.